IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

CWP No. 892 of 2003

Date of Decision : December 24, 2007

Oriental Insurance Company Ltd., …Petitioner.

Versus:

MACT-I, Sirmaur & Others …Respondents.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] Yes

For the petitioner: Mr. Ashwani K. Sharma, Advocate.

For the respondents : Mr. Sanjeev Kuthiala, Advocate.

Sanjay Karol, J. (Oral)

The present writ petition has been filed, assailing the award dated 1.8.2003 passed by the Motor Accidents Claims Tribunal-I, Sirmaur District at Nahan, H.P. in MAC Petition No. 145-MAC/2 of 2001, titled as Purna Wati and others v. Kirti Aggarwal & another.

Brief facts giving rise to the filing of the present writ petition are as under:-

On 15.5.2001, Utility Jeep No. HP-18-7301 in which deceased Sanjiv Kumar was travelling met with an accident in

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

which he received multiple injuries and died at the spot. He was survived by his mother, wife and four minor children.

His legal heirs except his wife filed a claim petition being MAC Petition No. 145-MAC/2 of 2001 under Section 140 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') in which his wife Smt. Kirti Aggarwal was added as a respondent being the owner of the said vehicle.

The petitioner –Insurance Company resisted the claim on the ground that the deceased along with his wife Smt. Kirti Aggarwal respondent No.1 were co-owners of the concerned vehicle and also joint holders of the insurance policy and the claim by second party to Insurance Policy was not maintainable.

After considering the entire material on record, including the documents and the statements of the parties, the Tribunal allowed the claim petition in terms of the impugned award and awarded compensation of Rs.5,19,000/- in favour of the claimants and against the Insurance Company. No amount was apportioned in favour of Smt. Kirti Aggarwal.

Learned counsel for the petitioner has challenged the award on the following grounds:-

As per policy Ext.P-2, Smt. Kirti Aggarwal and her husband Shri Sanjiv Aggarwal were joint policy holders as owners of the vehicle in question in accordance with the provisions of Section 146 of the Act. The effect of Ext.P-2 is that insurable interest was created in favour of the insured person

i.e. Shri Sanjiv Aggarwal, who expired on 15.5.2001 and his wife Smt. Kirti Aggarwal . Consequently, deceased being an insured person, on his behalf no claim could be maintained as he was not covered under the policy being a second party to the Policy. In view of the provisions of Section 166 of the Act, Smt. Kirti Aggarwal being the wife of the deceased and class-1 heir was required to be impleaded or treated as one of the claimants either as a clamant in the memo of parties or as a proforma respondent with Smt. Kirti Aggarwal being one of the claimants. Therefore, the indemnification clause of the policy could not be legally and validly invoked only against the Insurance Company as a sole respondent. Both Smt. Kirti Aggarwal and Shri Sanjiv Aggarwal were joint owners of the vehicle in question is evident from the sale certificate Ext.RW-2/B and also the statement of RW-1 licensing clerk of SDM office, Nahan, on the basis of which Ext.P-2 was issued. No steps were taken for getting the name of policy holder corrected between the date of issuance of the policy and the date of the accident, therefore, taking the policy on its face value Shri Sajiv Aggarwal is to be considered a joint policy holder in view of the provisions of Section 161 of the Motor Vehicles Act. Smt. Kirti Aggarwal is a direct beneficiary and the petition is collusive in nature. Deceased was carrying the goods as owner of the vehicle is also evident from the statement of Shri Rajesh Kumar (PW-1) who has deposed that he had loaded certain goods in the vehicle for which he had paid the

carriage charges to Shri Sanjiv Aggarwal. In order to take benefit of the provisions of Section 140 of the Act, the claimants have filed a false claim. In support of his contentions, he has referred to the following decisions:-

"Sadhana Lodh *vs.* ***National Insurance Co. Ltd. and another*** (2003 (3) SCC 524), **United India Insurance Co. Ltd**. v. **Smt. Chander Prabha Bhatt and others** (2005(3) Shim. L.C. 117) and **United India Insurance Co. Ltd**. v. **K. Subramaniam and others** (1991 ACJ 625)".

The claim Petition No. 145-MAC/2 of 2001 was filed by the mother and minor children of deceased Sanjiv Kumar, through their grand mother. The wife of the deceased was arrayed as respondent No.1 being the owner of the vehicle. The relationship between the parties was disclosed and it is clearly mentioned that in order to avoid any legal complicity the mother Smt. Kirti Aggarwal was impleaded as respondent No.1 but the claim was sought against the Insurance Company - respondent No.2 therein.

The mother filed her reply virtually conceding the claim of the claimants. The Insurance Company filed its reply clearly stating that the deceased and his wife were joint owners and joint policy holders, therefore, the claim petition was not maintainable. It is however, a matter of record that no permission of the Court under Section 170 of the Act was ever sought or obtained by the Insurance Company.

In support of their claim, claimants examined three witnesses. Shri Arun Bali (PW-2), Junior Clerk, H.P. State Co. Operative Bank, Dadahu proved the bank account statement (Ext.PW-2/A) of Smt. Kirti Aggarwal to show that the payments of the vehicle were made from the said account. Claimant Purnawati (PW-3) has proved that the deceased was serving as a Clerk in the Tehsil Office, Dadahu and drawing a salary of Rs.6073/- P.M. Shri Satinder Singh, Licensing Clerk, SDM Office, Nahan (RW-1) has deposed that as per registration certificate, the vehicle in question was registered in the name of Smt. Kirti Aggarwal wife of Shri Sanjiv Kumar. As per their record, the sale letter was in the name of Smt. Kirti Aggarwal and Shri Sanjiv Aggarwal, (Mark 'X'), and no compliant was received to the effect that the Registration Certificate (Ext.PB) was wrongly issued in the name of Smt. Kirti Aggarwal. The Insurance Cover Note Ext.R-1 was tendered in evidence by the counsel appearing for the Insurance Company.

Smt. Kirti Aggarwal (RW-2) has proved salary slip Ext.PA to prove that the deceased was in government service and could not own any vehicle without the permission of the Government. She has further proved the copy of invoice (Ext. RW-2/A) of the vehicle in question and certificate (Ext.RW-2/B) issued by the Seller of the vehicle to show that vehicle in question was sold in the name of Smt. Kirti Aggarwal. As per her Bank Account statement (Ext.RW-2/C) (H. P. State

Cooperative Bank) payments towards the installments of the vehicle were made from her account. Receipt dated 6.2.2003 (Ext.RW-2/D) showing repayment of the loan of the vehicle is issued in her name. However, Ext.RW-2/E of the same date is in the name of both Kirti Aggarwal and Sanjiv Kumar.

During trial she also got tendered, documents Ext.R-2 to Ext.R-4 i.e. the pleadings with respect to Claim Petition No. 177-MAC/2 of 2001 filed by the other claimants in relation to the incident in question.

It is clear that vehicle in question stood registered by the Registration Authority in the name of Smt. Kirti Aggarwal alone and as per the Bank account statement Ext.PW-2/A and Ext.PW-2/C, installments towards repayment of the loan amount were made through the account of respondent No.2 alone. The Registration Certificate in itself is a proof of ownership as per Section 2(xxx) of the Act.

Ext.R-1 is not a public document and could not have been exhibited by merely tendering the same in the Court. It is a matter of record that no witness was produced and examined by the respondent-Insurer to prove the same yet I have examined the same. Copy of invoice Ext.R-1 would show that in the column showing the name of the insured, name of Smt. Kirti Aggarwal, is written and name of Sanjiv Aggarwal is written in the column of address of the insured. From the same, it cannot be said that the policy was joint as normally the parentage or

name of husband in case of ladies is normally given after the name of the purchaser. From Ext.PW-2/B, it is clear that vehicle in question was sold to Smt. Kirti Aggarwal wife of Sh. Sanjiv Aggarwal only. No doubt there are two documents of the same invoices having Ext.RW-2/A and Mark 'X' which are not identical. Invoice Ext.RW-2/A is in the name of "Smt. Kirti Aggarwal w/o Sh. Sanjiv Aggarwal", whereas invoice Mark 'X' is in the name of Smt. Kirti Aggarwal, Mr. Sanjiv Kumar Aggarwal" Village and Post Office Dadahu, Tehsil Nahan, Distt. Sirmaur. Be that as it may be, the fact of the matter is that the seller has issued a certificate Ext.RW-2/B stating that vehicle was sold to Smt. Kirti Aggarwal. Therefore, it cannot be said that vehicle in question was purchased jointly by Smt. Kirti Aggarwal and Shri Sanjiv Aggarwal. The Insurance policy cannot be said to have been jointly taken by Smt. Kirti Aggarwal and Shri Sanjiv Aggarwal. The Tribunal has already come to the conclusion that the vehicle in question was purchased by Smt. Kirti Aggarwal, which is evident from the Registration Certificate. The petitioner has assailed the award in a writ jurisdiction. This Court in a writ jurisdiction is not sitting in an appeal and is required to minutely scrutinize the evidence and the documents. Yet I have carefully gone through the record to see as to whether the award passed by the Tribunal is perverse or not. I am in total agreement with the findings rendered by the Tribunal.

It is a matter of record and evident from Ext. R-2 and Ext.R-3 that in other claim petitions arising out of the same accident the Insurer did not take pleas and defences which are sought to be taken in the present case. The stand of the Insurer is not only contradictory but its conduct is unjust, unreasonable and unfair.

Further, it is a matter of record that no permission under Section 170 of the Act was sought or accorded by the Court. In this view of the matter and keeping in view the ratio of law laid down by the Apex Court in ***Sadhana Lodh*** *vs.* ***National Insurance Co. Ltd. and another*** (2003 (3) SCC 524), ***Bijoy Kumar Dugar*** *vs.* ***Bidya Dhar Dutta and others****, (2006 (3) SCC 242),* ***National Insurance Co. Ltd****. vs.* ***Mastan and another****, (2006 (2) SCC 641),* ***National Insurance Co. Ltd., Chandigarh*** *vs.* ***Nicolletta Rohtagi and others****, (2002 (7) SCC 456),* ***United India Insurance Co. Ltd****. vs.* ***Jyotsnaben Sudhirbhai Patel and others****, (2003 (7) SCC 212),* ***H.S.Ahammed Hussain and another*** *vs.* ***Irfan Ahammed and another****, (2002 (6) SCC 52)* and ***Rita Devi (Smt.) and others*** *vs.* ***New India Assurance Co. Ltd. and another****, (2000 (5) SCC 113)*, it would not be open for the Insurer to expand the grounds of challenge other than ones which they are entitled to raise in accordance with provisions of Section 149(2) of the Act.

Learned counsel for respondents has raised doubts about the maintainability of the writ petition itself. This Court in *National Insurance Co. vs. Soma Devi,* Latest HLJ 2003(HP)(FB) 982 has held:-

> "16. It, therefore, becomes abundantly clear that in all such like cases where the award on the face of it is a perversity or is based on fraud, and the Insurance Company has no remedy under the Motor Vehicles Act of either challenging the Award in appeal or being either to have it recalled or reviewed by the Tribunal itself, the power of judicial review by this Court in the exercise of its extraordinary jurisdiction under Articles 226/227 of the Constitution can always be invoked and exercised by this Court in dispensing justice to the parties."

I am not going into the question of maintainability of the writ petition in view of my observations with regard to other issues involved in the present petition.

Learned counsel for the respondents has submitted that Annexures P-4 and P-5 filed with the writ petition do not pertain to the case in question and cannot be looked into. For the purpose of adjudication of the present case I have perused the complete record and taken into consideration only such of those documents which have been exhibited and proved in accordance with law in the instant case.

In my view, therefore, it cannot be held that insurable interest was created in favour of Sanjiv Aggarwal or

that the claim against the Insurance Company was not maintainable.

Section 166(1) of the Act provides that an application for compensation can be filed by all or any of the legal representatives of the deceased. Therefore, it was not necessary for respondent No.1 to be impleaded as a claimant. She was impleaded as a respondent. It is not that the Tribunal, after awarding the compensation has apportioned the amount payable and awarded the share to respondent No.1 Smt. Kirti Aggarwal as legal heir of deceased Sanjiv Aggarwal. Respondent No.1 Smt. Kirti Aggarwal is neither the claimant nor the beneficiary of the claim petition and the awarded amount. The Claim Petition, therefore, was in absolute order. Simply because Smt. Kirti Aggarwal one of the legal heirs of the deceased happened to be the owner and Policy holder of the vehicle that by itself would not be a ground for defeating the legitimate and statutory rights of other legal heirs of deceased Sanjiv Aggarwal. The petition cannot be said to be collusive.

For the aforesaid reasons, the writ petition is accordingly dismissed.

(Sanjay Karol),
Judge.

December 24, 2007.
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